

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH R. ALSTON,)	
)	
Petitioner,)	CASE NO. C11-250-TSZ-MAT
)	
v.)	
)	ORDER DENYING MOTION FOR
JEFFERY A. UTTECHT,)	DISCOVERY AND RE-NOTING
)	PETITION
Respondent.)	
_____)	

This is a federal habeas action brought under 28 U.S.C. § 2254. This matter comes before the Court at the present time on petitioner's motion for discovery. Respondent has filed a response opposing petitioner's motion. The Court, having reviewed petitioner's motion, respondent's response, and the balance of the record, does hereby find and ORDER as follows:

(1) Petitioner's motion for discovery (Dkt. No. 15) is DENIED. Petitioner requests in his motion that he be provided with transcripts of the opening statements from his trial so that he "may establish facts violating rights to comment on right to remain silent." (*Id.*) He also asks that he be granted a continuance, upon receipt of the discovery, so that he may "study the facts and make a proper argument." (*Id.*)

01 The Court may authorize a party to conduct discovery in an action brought under § 2254
02 upon a showing of good cause. Rule 6(a), Rules Governing Section 2254 Proceedings in the
03 United States District Courts. Petitioner has not made the requisite showing of good cause to
04 support his discovery request. Accordingly, the Court will not order production of the
05 requested transcript at this time.

06 (2) On May 2, 2011, the Court received from petitioner a document entitled
07 "Petition for Writ of Habeas Corpus under U.S. Const. Section 2254." (*See* Dkt. No. 17.)
08 Given this caption, the document was posted on the Court's docket as an amended petition for
09 writ of habeas corpus. However, a review of the document suggests that petitioner intended it
10 to constitute his response to respondent's answer to the petition and the Court will construe it as
11 such. So construed, the document was not timely because it was not signed by petitioner until
12 several days after his response was due. The Court has nonetheless accepted the document for
13 filing. In order to allow respondent an opportunity to file a reply brief in support of his answer,
14 should he desire to do so, the Court RE-NOTES this matter on the calendar for consideration on
15 **May 20, 2011**. Respondent may file and serve any reply brief by that date.

16 (3) The Clerk is directed to send copies of this Order to petitioner, to counsel for
17 respondent, and to the Honorable Thomas S. Zilly.

18 DATED this 10th day of May, 2011.

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Mary Alice Theiler
United States Magistrate Judge